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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Cristobal Hernandez, Jr.,

10 Plaintiff,

11 v.

12 Janice K Brewer, et al.,

13 Defendants.
14

No. CV-11-01945-PHX-JAT

ORDER

15 Before the Court in this closed case is Plaintiff Cristobal Hernandez, Jr.'s request to
16 file a motion for reconsideration of this Court's order striking Plaintiff's motion for Rule
17 60 relief from this Court's 2013 judgment. (Doc. 295). The Court now rules.

18 **I. BACKGROUND**

19 The Court discussed the history of this case in striking Plaintiff's latest motion for
20 Rule 60 relief:

21 Plaintiff brought this action in 2011 against Arizona state and county officials
22 to challenge on various legal theories the seizure of his home under Arizona
23 civil forfeiture laws, and to contest the legality of a traffic stop made by
24 Defendant Parry. (Doc. 16 at 16–18). In 2013, except for a § 1983 claim
25 against Defendant Parry, each of Plaintiff's claims were dismissed because
26 they either were not supported by sufficient factual allegations, were barred
27 by the relevant statute of limitations, or were premised on statutes which
28 provided no private right of action. (See Doc. 42 at 1–13). The remaining
claim against Defendant Parry was disposed of at summary judgment in
2013, (Doc. 166), and the Clerk of the Court entered judgment against
Plaintiff. The determinations underlying that judgment were affirmed by the
Ninth Circuit Court of Appeals in 2016. (Doc. 179). The Court's denial of
Plaintiff's motion for relief from the judgment was likewise affirmed by the
Ninth Circuit in 2019. (Compare Doc. 222, with Doc. 273).

Since the 2013 judgment, Plaintiff has filed 30 motions which the
Court has construed as motions for relief from judgment under Rule 60. (See

1 Docs. 222, 257). Plaintiff has also filed three motions for recusal of the
2 undersigned. (Docs. 83, 199, 226). Each of these motions have been denied.
3 Because of Plaintiff's frivolous filings the Court declared Plaintiff a
4 vexatious litigant in 2018 and entered a pre-filing order prohibiting him from
5 filing further papers in this case without first seeking this Court's leave to do
6 so. (Doc. 257). Shortly afterward the Court awarded Defendants their
7 attorney's fees incurred in responding to the filings leading up to the
8 vexatious litigant declaration. (Doc. 269).

9 (Doc. 292 at 1–2).

10 Plaintiff filed his most recent Rule 60 motion in August of 2022. (Doc. 275).
11 The Court found that it was untimely as a Rule 60 motion based on newly discovered
12 evidence because it had not been filed within one year of the judgment, as required
13 by Rule 60(c)(1). (Doc. 292 at 3–4). The Court also found that although there was
14 no similar limit for motions based on fraud on the Court, Plaintiff had not “alleged
15 that any of this Court's judgments were obtained by fraud,” but rather had
16 “disinterred in his recent filings the same basic allegation which he ha[d] made time
17 and again in this case: that state prosecutors perpetrated fraud on the state superior
18 court in the state civil forfeiture action.” (*Id.* at 4). The Court concluded that because
19 Plaintiff's motion was untimely there was no valid reason to permit it to be filed.
20 (*Id.* at 5).

21 Plaintiff then filed the instant request to file a motion for reconsideration,
22 attaching a letter from the Pinal County Clerk that Plaintiff claims shows that
23 Plaintiff “should have never been charged with any criminal offenses,” that “state
24 prosecutors unlawfully withheld property from Hernandez for 11 years,” and that
25 “state prosecutors knew or should have known Hernandez was innocent.” (Doc. 295
26 at 1–2).

27 **II. DISCUSSION**

28 “The Court will ordinarily deny a motion for reconsideration absent a showing of
manifest error or a showing of new facts or legal authority that could not have been brought
to its attention earlier with reasonable diligence.” LRCiv 7.2(g)(1). Even if the letter
Plaintiff submitted qualifies as newly discovered evidence under Local Rule of Civil

1 Procedure 7.2(g)(1) and Federal Rule of Civil Procedure 60(b)(2), it would not present a
2 reason for the Court to reconsider its recent order.

3 First, Plaintiff's latest Rule 60 motion was not filed within one year after the Court's
4 2013 judgment as required by Rule 60(c)(1), and the new evidence Plaintiff has submitted
5 with his request cannot make that motion any less untimely. Second, Plaintiff's request
6 makes plain that Plaintiff's motion for reconsideration will use the newly submitted letter
7 to advance the same state-prosecutor-fraud-on-the-state-court arguments, and thus will not
8 show that Plaintiff is entitled to relief, under Rule 60(d)(3), from this Court's judgment due
9 to fraud on this court.¹ The Court therefore concludes that Plaintiff's request does not show
10 any valid reason why the Court should permit Plaintiff's motion for reconsideration to be
11 filed. The Court will deny the request.

12 In the event that his request was denied, Plaintiff also requested "permission to file
13 with the 9th Circuit Court of Appeals." (Doc. 295 at 2). The Court denies this request to the
14 extent that it is a motion for extension of time to file a notice of appeal from a final decision
15 of this Court. To the extent this request is one for relief from any filing restriction the Ninth
16 Circuit has placed on Plaintiff, the Court denies this request without prejudice to seeking
17 such relief from the Ninth Circuit.

18 **III. CONCLUSION**

19 For the foregoing reasons,

20 **IT IS ORDERED** that Plaintiff's request to file a motion for reconsideration (Doc.
21 295) is DENIED.

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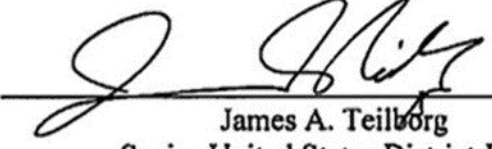
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27 ¹ (See Doc. 295). Plaintiff's most recent Rule 60 motion also sought the undersigned's
28 recusal for purported bias. Plaintiff's instant request does not suggest that the newly
submitted letter might present a reason to reconsider the Court's denial of the recusal
motion.

1 **IT IS FURTHER ORDERED** that Plaintiff's request for "permission to file with
2 the 9th Circuit Court of Appeals" is DENIED as specified herein.

3 Dated this 10th day of August, 2023.

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8 James A. Teilborg
9 Senior United States District Judge
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